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Daily Environment Report

Afternoon Briefing - Your Preview of Today's News

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'Making EPA Great Again' Is Stated Aim of House Science Panel

Posted February 01, 2017, 04:03 P.M. ET

By [Rachel Leven](#)

The social cost of carbon—the economic costs of carbon emissions—and “secret science” are among the top issues the House Science, Space and Technology Committee intends to examine in the 115th Congress, the committee announced Feb. 1.

Changes to some of these areas could have significant impacts on how rules are justified at the EPA. The committee will also look to limit Energy Department money spent on loan guarantees or subsidies and focus funds instead on research the private sector can't conduct.

These efforts are generally areas that Republicans sought to address in previous Congresses. But with the new Republican-swept Washington, there are better odds for successfully executing these actions. The hearing may touch on science transparency issues, among other areas and could help the committee build a blueprint for future priorities and actions, a committee aide told Bloomberg BNA.

These efforts, specifically on sound science, will begin Feb. 7 when the committee holds its “Making EPA Great Again” hearing, which will include witnesses from groups such as the American Chemistry Council.

The committee intends to “revisit” the issues addressed in legislation in the 114th Congress. That includes areas under the Secret Science Reform Act that would have barred the EPA from finalizing rules without releasing scientific information and data used to develop the rule.

Another area of interest for the committee includes reauthorization of the National Institute of Standards and Technology programs to address cyberattack vulnerability issues, according to the announcement.

Gorsuch Could (But Might Not) Spell Trouble for Environmental Rules

Posted February 01, 2017, 02:11 P.M. ET

By [Rebecca Wilhelm](#)

U.S. Supreme Court nominee Neil Gorsuch has opposed giving broad deference to the EPA and other federal agencies during a decade on the federal bench, but his track record also indicates a reluctance to support “heavy-handed rollbacks” of Obama-era environmental rules, legal experts told Bloomberg BNA.

If confirmed, Gorsuch’s biggest impact on environmental law might come from his opposition to Chevron deference, which refers to a 1984 Supreme Court decision giving agencies wide latitude in deciding how to interpret their responsibilities under federal statutes, they said.

Gorsuch “has expressed skepticism about Chevron deference, which would certainly have an effect on environmental law cases,” Jonathan H. Adler, Case Western Reserve University School of Law professor, told Bloomberg BNA in an e-mail. “Perhaps paradoxically, this position could make it more difficult for a Trump administration to undo some of the Obama administration’s environmental initiatives.”

President Donald Trump has explicitly said that he intends to reverse a number of Obama administration policies, but it’s likely that Gorsuch would not support “heavy-handed rollbacks,” Brendan K. Collins, a partner at Ballard Spahr LLP in Philadelphia who has argued before the Supreme Court, told Bloomberg BNA.

Limits on ‘New Sheriff’

“I think that Gorsuch would frown on the notion that the 2016 election result ought to lead to a reversal of judicially affirmed conclusions of law,” Collins said.

For example, the Supreme Court has found that carbon dioxide is a pollutant under the Clean Air Act subject to Environmental Protection Agency regulation, but Gorsuch might be hostile to reversing that determination simply “because there’s a new sheriff in town,” Collins said.

And if confirmed, Gorsuch could also—if consistent in his reasonings—upend regulations promulgated by the Trump administration, Harvard Law School professor Richard J. Lazarus told Bloomberg BNA in an e-mail.

“The challenge ... is to have judges who in fact apply the doctrine in an even-handed way even when it goes against the policies they might personally favor or be favored by those who have nominated them to the Court,” Lazarus said. “Far more judges claim to be even-handed than in fact are.”

“But let’s hope that if Judge Gorsuch becomes Justice Gorsuch, he will be that kind of outstanding Justice who is even-handed.”

Nearly a Year Since Scalia’s Death

Trump Jan. 31 nominated Gorsuch, who has served on the U.S. Court of Appeals for the Tenth Circuit since 2006, to fill the seat left vacant almost a year ago by the death of Justice Antonin Scalia. Senate Republicans had refused to consider President Barack Obama’s nominee Merrick Garland, who is chief judge of the U.S. Court of Appeals for the District of Columbia Circuit.

Speaking at the White House late Jan. 31, Gorsuch pledged to be impartial and independent, stressing that a judge’s role is “to apply, not alter, the work of the people’s representatives.”

He added: “A judge who likes every outcome he reaches is very likely a bad judge.”

Gorsuch has reviewed almost a dozen environmental law cases during his tenure at the Tenth Circuit, including an attempt to bar a mining company that settled its Superfund liability in bankruptcy court from recovering some of those costs and a challenge to the EPA’s decision not to limit mercury and selenium emissions from a coal-fired power plant in northwest New Mexico (Asarco, LLC v. Noranda Mining, Inc., 844 F.3d 1201, 83 ERC 1897, 2017 BL 59, 10th Cir. 2017; WildEarth Guardians v. EPA, 759 F.3d 1196, 79 ERC 1194, 2014 BL 204023, 10th Cir. 2014).

Time ‘to Face the Behemoth’

Under the Chevron doctrine, courts take a two-step approach in reviewing challenges to agency actions. If the statute clearly speaks to the issue, the inquiry stops there. If the statute is silent or ambiguous, the court determines whether the agency’s interpretation is a permissible statutory construction. If so, the court defers to the agency (Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 21 ERC 1049 (1984)).

Gorsuch outlined his views on agency deference in a concurrence he wrote to one of his own majority opinions last year (Gutierrez-Brizuela v. Lynch, 834 F.3d 1142, 2016 BL 273118, 10th Cir. 2016).

“Chevron and Brand X permit executive bureaucracies to swallow huge amounts of core judicial and legislative power and concentrate federal power in a way that seems more than a little difficult to square with the Constitution of the framers’ design,” Gorsuch wrote in the immigration law case. “Maybe the time has come to face the behemoth.”

‘Super Court of Appeals’

The Supreme Court held in Brand X that an agency’s interpretation of an ambiguous statute outweighs prior decisions of a federal appeals court, unless the court has held that the statute is not ambiguous (Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs., 545 U.S. 967, 73 U.S.L.W. 4659 (2005)).

This doctrine has permitted agencies to act like “some sort of super court of appeals,” Gorsuch wrote in *Gutierrez-Brizuela*.

In *United States v. Magnesium Corporation of America*, the Tenth Circuit upheld an EPA reinterpretation of a Resource Conservation and Recovery Act regulation governing mineral processing waste. Writing for the majority, Gorsuch reassured regulated parties that they would not be subjected “to the whims of an agency’s arbitrary interpretive reversals” (*United States v. Magnesium Corp. of Am.*, 616 F.3d 1129, 71 ERC 1641, 2010 BL 190182, 10th Cir. 2010).

He noted that the Administrative Procedure Act requires agencies to explain their decision-making and empowers courts to review those decisions.

Scant Environmental Law Record

“He hasn’t made a lot of substantive environmental decisions,” Collins said. “A number of environmental advocacy groups have lambasted his record, but I don’t think there’s much traction there.”

Sierra Club executive director Michael Brune said in a statement: “Gorsuch has proven himself hostile to environmental protection ... and cannot be trusted to protect our air, our water, or our communities.”

The cases in which he has made decisions on environmental or public lands issues are really more about his administrative law views, Harvard Law School professor Jody Freeman told Bloomberg BNA. “He seems to come down on both sides depending on the particulars of the case.”

‘Not ... Out of the Mainstream’

“He’s not wacky or out of the mainstream,” Victor B. Flatt, professor at the University of North Carolina at Chapel Hill School of Law, told Bloomberg BNA.

For example, Gorsuch ruled in favor of a plaintiff suing a nuclear weapons manufacturer and held that the Price Anderson Act did not preempt their federal and state tort claims (*Cook v. Rockwell Int’l Corp.*, 790 F.3d 1088, 80 ERC 2172, 2015 BL 199152, 10th Cir. 2015).

Gorsuch also voted to uphold Colorado’s clean energy law, which requires 20 percent of electricity to come from renewable fuels, against a constitutional challenge (*Energy & Env’t Legal Inst. v. Epel*, 793 F.3d 1169, 2015 BL 222450, 10th Cir. 2015).

“That one decision was probably something that advocates for clean energy will like, but you can’t make too much of it,” Freeman said.

Scalia Comparisons

Gorsuch is a conservative jurist and would likely replicate Justice Scalia’s positions, Freeman said. However, he might be more skeptical than Scalia of agency deference.

Scalia was an early proponent of *Chevron*, although in the past few years he began questioning the doctrine, Flatt said. In that sense, Gorsuch is not Scalia. “He actually moves the court in a direction that’s more likely to disavow the *Chevron* doctrine.”

But the doctrine is far from doomed, Thomas Lorenzen, a partner at Crowell & Moring LLP in Washington, D.C., told Bloomberg BNA in an e-mail. "So far, I think only Justice [Clarence] Thomas agrees with Judge Gorsuch that Chevron is wrong."

Son of Former EPA Administrator

The 49-year-old jurist is the son of Anne Gorsuch Burford, who served under President Ronald Reagan as the first female administrator of the EPA, but was forced to resign in 1983 after less than two years on the job, after trying to dismantle the agency.

Gorsuch graduated from Harvard Law School in 1991. He clerked for Justice Anthony Kennedy and would be the first sitting justice to serve alongside his former boss.

Democratic Boycott Stalls Action on Trump EPA Nominee Pruitt

Posted February 01, 2017, 12:26 P.M. ET

By [Jennifer A. Dlouhy](#) and [Ari Natter](#)

Senate Democrats stalled action on President Donald Trump's pick to lead the Environmental Protection Agency, boycotting a committee vote to advance Oklahoma Attorney General Scott Pruitt amid questions about his commitment to upholding clean air and water protections.

It was the second time in as many days that Democrats had taken the unusual step of exploiting committee rules to halt action on Trump's cabinet nominees. On Feb. 1, Republicans on the Senate Finance Committee voted to suspend the panel's rules, allowing them to advance the nominations of Steven Mnuchin to run the Treasury Department and Tom Price to head Health and Human Services.

The Senate Environment and Public Works Committee could try a similar tactic to dislodge Pruitt's nomination, but it was not immediately clear Wednesday whether—or when—they would take that step.

Sen. John Barrasso (R-Wyo.), who heads the committee, called the Democratic blockade "a disappointing turn of events," and said it would keep the EPA rudderless at a critical time. "This amounts to nothing more than political theater at the expense of working on issues we care about."

But Democrats said they were compelled to delay action on Pruitt because the nominee had failed to substantively answer their questions about rules governing lead in gasoline, air pollution and toxic chemicals.

'No Joy'

"I take no joy in not being a participant in this business meeting scheduled today," said Sen. Tom Carper (D-Del.), the top Democrat on the Senate Environment and Public Works Committee. Pruitt's answers were "at best incomplete and evasive," Carper said outside the committee hearing room, adding: "We need the truth."

Pruitt has drawn intense scrutiny because he has spent much of his career battling the agency he is now tapped to lead. As Oklahoma's attorney general, Pruitt went to court to fight more than a dozen

actions by EPA, including its landmark declaration that greenhouse gas emissions endanger public health. During a confirmation hearing last month, Pruitt softened his stance on that and other issues, insisting that environmental protection and energy development can go hand in hand.

With Senate Democrats huddled outside the hearing room, Republicans inside took turns lambasting the delay.

Sen. Shelley Moore Capito (R-W.V.) called the boycott a stunt.

“Our constituents elected us to do our job, and that includes coming to committee hearings and voicing our opinions,” Capito said. “Failing to show up does not serve our constituents.”

Outside, Democrats told reporters that they were demanding transparency.

“This is kind of an affront on the Senate’s role on advise and consent,” said Sen. Cory Booker (D-N.J.).

Barrasso previously rebuffed Democrats’ request to delay a vote on Pruitt, countering that the nominee has answered roughly 1,200 questions—more than any past nominee to lead the EPA.

“The committee’s review of Attorney General Pruitt’s nomination has been unparalleled in its scrutiny, thoroughness, and respect for minority rights,” Barrasso said in a Jan. 31 letter to Carper.

Sen. Roger Wicker (R-Miss.) predicted Pruitt would eventually be confirmed.

“We’ll get past this,” Wicker said, casting the Democratic delay as less about the Pruitt nomination than “their disappointment with the results of the November election”

Under historic committee rules, at least two members of the minority must be present to constitute a quorum and allow the panel to take action on legislation and nominations. The committee could attempt to change those rules or temporarily suspend them in a bid to move Pruitt’s nomination to the Senate floor.

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Yanked EPA Mercury Dental Amalgam Rule Draws Lawsuit

Posted February 01, 2017, 03:27 P.M. ET

By [Amena H. Saiyid](#)

The Trump EPA can’t pull back a mercury dental amalgam rule that had already been scheduled for publication in the Federal Register without going through the notice and comment process, an environmental group said in a [lawsuit](#) challenging that decision ([Nat. Res. Def. Council v. EPA](#), S.D.N.Y., No. 17-cv-00751, 2/1/17).

The Natural Resources Defense Council argued that the rule, which had been added to the Federal Register public inspection page on Jan. 19, amounted to a publication of the rule. The rule was scheduled for publication in the Jan. 24 edition of the Federal Register. The rule in question set federal effluent limits to regulate the 100,000 dental clinics that discard dental fillings containing mercury, a potent neurotoxin, into municipal sewer systems.

The nonprofit said the EPA's action to withdraw the rule from publication on Jan. 23 was a violation of the Administrative Procedure Act, which requires an agency to provide public notice and an opportunity to comment before repealing a final rule that has been published. It also was a violation of the Federal Register Act, which makes a rule final when it is made available for public inspection, NRDC Litigation Director Aaron Colangelo told Bloomberg BNA Feb. 1.

The lawsuit, filed in the U.S. District Court for the Southern District of New York, comes after President Donald Trump took office, and White House Chief of Staff Reince Priebus issued a memo requiring federal agencies to withdraw any rules that had been signed, but not yet published.

Only EPA Rule Scheduled for Publication

In fact, the dental amalgam rule is the only EPA rule that was scheduled to be published in the Jan. 24 Federal Register, but it never was because of the White House directive.

"Once the rule is posted for final publication, the rest is a matter of typesetting it," said Colangelo. "The EPA mercury effluent rule was final and adopted by the agency. The Trump administration can't rescind the rule without going through notice and comment as required by the Administrative Procedure Act."

The APA, which governs how federal agencies set and propose rules, requires public notice and comment before a rule can either be issued in final form or repealed.

More importantly, Colangelo said the Federal Register Act states explicitly that a document isn't valid until it has been filed with the Office of Federal Register and a copy made available for public inspection. "The EPA did both in this case," he added.

The EPA didn't respond when it asked whether it did indeed withdraw the rule. The National Association of Clean Water Agencies, which represents publicly owned wastewater treatment plants, didn't have an immediate comment on the lawsuit either.

EU Ready to Lead on Climate if U.S. Backtracks: Official

Posted February 01, 2017, 03:52 P.M. ET

By Stephen Gardner

The European Union is on track to meet its 2020 decarbonization goals and is ready to "assume global leadership" in case the U.S. under President Donald Trump backtracks on its emissions-reduction commitments, the EU's top energy official said Feb. 1.

Maros Sefcovic, European Commission vice president for Energy Union, said it was "not easy to follow the pace of developments in the United States," but "based on the recent announcements we have heard, of course we are concerned" about the direction the Trump administration's climate policy might take.

"Some of the actions that have been announced" in the U.S., "might lead to the situation where Europe would have to assume—and we are ready for that—global leadership in the fight against climate change," he added.

The EU favors reducing carbon emissions not only for environmental reasons, but also because it “makes very strong business sense; we really can modernize the whole economy,” Sefcovic said.

In addition, the EU has a “positively developing relationship with China” in areas such as emissions trading to cap and reduce greenhouse gas emissions, he said.

Progress Report

Sefcovic was speaking on the commission’s publication of a report to the European Parliament and EU member countries on progress toward the bloc’s decarbonization goals.

According to the report, EU greenhouse gas emissions in 2015 were down 22 percent from 1990 compared to a legally binding target to reduce emissions by 20 percent by 2020. The EU also is on track to beat targets for 2020 for renewable sources to provide 20 percent of final energy consumption and for energy consumption to fall to levels that would represent a 20 percent energy efficiency gain.

According to Sefcovic, the EU would have to spend 387 billion euros (\$417 billion) a year after 2020 to meet additional goals by 2030 of a 40-percent reduction in greenhouse gas emissions compared to 1990, a 27 percent share for renewables in consumed energy, and a 27 percent energy efficiency saving.

He cautioned EU countries against spending on fossil fuel energy infrastructure that could become redundant. “We need to invest smartly” because “traditional” investment would lead to a “huge overcapacity,” he said.

Despite progress, “the EU’s current energy plans don’t come close to the scale of action needed to meet the threat of climate change,” said Sebastian Mang, a policy adviser with Greenpeace.

The bloc should “accelerate its move to 100 percent renewable energy, and it must scrap subsidies for fossil fuels,” Mang said.

Dakota Access Oil Pipeline Nears Final Permit, Lawmakers Say

Posted February 01, 2017, 9:32 A.M. ET

By Ari Natter

Energy Transfer Partners LP may be close to getting the permit it needs to finish the Dakota Access oil pipeline, a project that became a flash point for environmentalists but a symbol of President Donald Trump’s pledge to jump start energy infrastructure.

Just a week after Trump signed a memo directing the Army to expedite the line’s approval, North Dakota Sen. John Hoeven (R) said Jan. 31 that the Army Corps of Engineers had been directed to move forward with the easement necessary to build the final leg of the \$3.8 billion crude oil line under North Dakota’s Lake Oahe.

“Essentially where we are at is the White House has done whatever review they needed to do and they have directed the (acting) Secretary of the Army Robert Speer to go ahead with the easement,” Hoeven said in a telephone interview. “They will do that in the next few days.”

The decision would follow months of protests that have stalled construction on the last leg of the 1,172-mile (1,886-kilometer) project. Environmentalists warn it will endanger water supplies and Native Americans say it will damage culturally significant sites. But Trump vowed during his campaign to speed reviews of energy projects and ordered his administration in his first days in office to expedite the Dakota line as well as the Keystone XL line connecting the Canadian oil sands with refineries on the Gulf of Mexico.

The rest of the line will be built with “the necessary safety features to protect” the Standing Rock Sioux tribe and others that have fought against its construction, Hoeven said in a statement.

The tribe said Jan. 31 that it will challenge any suspension of the federal environmental review that was being conducted on the Dakota Access line. Abandoning the review would “amount to a wholly unexplained and arbitrary change based on the president’s personal views,” the tribe said in an e-mailed statement.

No Notice

The tribe said it hadn’t received a notice that an environmental review had been suspended.

“The Army Corps lacks statutory authority” to stop the review and issue an easement, the tribe said. “The Corps must review the presidential memorandum, notify Congress, and actually grant the easement.”

The Army Corps and Energy Transfer didn’t respond to requests for comment after regular business hours. Rep. Kevin Cramer (R-N.D.) said in a statement Jan. 31 that the Army Corps had notified Congress of its plan to grant the easement.

“President Trump has proven to be a man of action and I am grateful for his commitment to this,” Cramer said.

Trump owned as much as \$1 million in Energy Transfer Partners LP shares, according to his federal candidate disclosures in 2015. He has since sold those shares, Hope Hicks, a White House spokeswoman, said in December when she was with the transition team. Trump’s pick for energy secretary, former Texas Gov. Rick Perry, served on the board of the company but resigned Dec. 31, according to his ethics statements.

The Dakota Access line would give oil explorers in the prolific Bakken shale formation a new route to markets, allowing them to forgo more costly rail shipments that have been a backstop when existing pipes fill up. With a capacity of about 470,000 barrels a day, Dakota Access would ship about half of current Bakken crude production to the Midwest and Gulf Coast.

Hoeven said that Vice President Mike Pence on Jan. 31 agreed to “push this forward” after the pair discussed the issue during the Senate Republican Caucus meeting which they both attended. Hoeven also spoke with Speer.

—With assistance from Meenal Vamburkar and Jennifer A. Dlouhy.

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Chesapeake Bay Improvement on Track, Group Says

Posted February 01, 2017, 02:14 P.M. ET

By [Leslie A. Pappas](#)

The Chesapeake Bay watershed's health continues to improve and is even ahead of schedule in several areas, a regional partnership dedicated to the restoration of the largest U.S. estuary said Feb. 1.

Oysters in some tributary beds surpassed weight and density targets, blue crabs are abundant and the regrowth of underwater grasses is two years ahead of schedule, the Chesapeake Bay Program said in its annual report, "[Bay Barometer: Health and Restoration in the Chesapeake Bay \(2015-2016\)](#)."

"As a whole, we're seeing many of the indicators moving in a very positive direction," program director Nick DiPasquale told reporters in a conference call. The program is a regional partnership of federal, state and local governments, academic institutions, citizen groups and non-governmental organizations focused on restoring the bay.

DiPasquale said the program has reached "and in some cases surpassed" the halfway mark towards goals laid out in the [Chesapeake Bay Watershed Agreement](#), the partnership's 2014 plan for restoring the bay.

The bay met its 2017 interim targets in a "pollution diet" towards cleaner water, achieving 31 percent of nitrogen reductions, 81 percent of the phosphorus reductions and 48 percent of sediment reductions necessary to meet long-term clean water goals, the report found.

'Statistically Significant' Signs

The data is in line with recent research from other groups, such as the Chesapeake Bay Foundation, a bay-focused environmental group, and the University of Maryland's Center for Environmental Science, which both found that the bay is making progress.

"The indicators show that what we're doing is working," Don Boesch, president of the University of Maryland's Center for Environmental Science, said during the call. "We're seeing clear, statistically-significant signs of improvement."

William C. Baker, president of the Chesapeake Bay Foundation, which gave the bay an overall health grade of C-minus in its most recent [report](#), said during the call that the recovery is still gradual, and "if we don't keep up the work," it could easily move back in the wrong direction. The foundation's C-minus grade follows a D-plus in 2014.

Above Targets

The indicators in the Chesapeake Bay Program's report showed several areas at or above targets:

- Underwater grasses: 92,315 acres in 2015, more than half the 185,000-acre goal;
- Black ducks: 51,332 spotted on average from 2013 to 2015, 51 percent of the 100,000-bird goal;
- Fish passage: 817 new stream miles added from 2012 to 2015, 82 percent of 1,000-mile goal;

- Blue crabs: females increased 92 percent from 2015 to 2016 to 194 million, 90 percent of 205 million goal;
- Protected lands: One million additional acres preserved since 2010, 50 percent of two million acres goal; and
- Oysters: restoration begun for habitats in six tributaries, progressing to goal of 10 tributaries by 2025.

Progress is slow, however, in efforts to preserve wetlands and forest buffers. The group found that 7,623 acres of wetlands were created or restored from 2010 to 2015, just 9 percent of 85,000 acre goal. And only 64 miles of forest buffers were planted from 2014 to 2015, just 7 percent of a 900-mile-per-year goal.

Utility Mercury Rule Settlement Possible Under Trump

Posted February 01, 2017, 01:33 P.M. ET

By Patrick Ambrosio

New leadership at the EPA could lead to a settlement in litigation over an Obama-era finding on the need to regulate mercury emissions from the power sector, states and industry organizations suggested in a court filing.

The state and industry petitioners, in a Jan. 31 [motion](#), asked a federal appeals court to temporarily halt the latest round of litigation over the Environmental Protection Agency's 2012 Mercury and Air Toxics Standards to allow the Trump administration to evaluate the issue. The petitioners said a 45-day extension in briefing deadlines would allow the new administration to evaluate whether it can resolve any of the issues raised in the case, potentially through a settlement (Murray Energy Corp. v. EPA, D.C. Cir., No. 16-1127, motion filed 1/31/17).

At issue is an April 2016 supplemental finding (RIN:2060-AS76) reaffirming the EPA's determination that it is "appropriate and necessary" to regulate mercury and other hazardous pollutants from power plants. The EPA issued that finding in a response to a 2015 U.S. Supreme Court decision, which concluded that the agency erred when it failed to consider cost in its initial decision-making.

The "appropriate and necessary" finding is the threshold decision that led the EPA to set the Mercury and Air Toxics Standards, which the agency estimated the compliance cost for the power sector at \$9.6 billion. The rule, which factored into the decision of some companies to invest in pollution controls or shutter coal-fired power plants, remains in place despite the Supreme Court's ruling in *Michigan v. EPA*.

Pruitt 'Walled Off' From Involvement

The utility mercury emissions case is one of the active lawsuits that Scott Pruitt, Trump's nominee to lead the EPA, brought against the agency while serving as Oklahoma attorney general. Pruitt, in a [written response](#) to questions posted by Senate Democrats, said he upon his nomination he was immediately "walled off" from involvement in legal action Oklahoma is pursuing involving the EPA.

Several Democratic senators questioned whether Pruitt would recuse himself from involvement as EPA administrator in any litigation he previously brought against the agency. Pruitt said he would recuse himself from participation in those cases, unless he received consent from Oklahoma and

permission from federal ethics officials to be involved.

If Pruitt were to recuse himself from any decision-making related to litigation brought by Oklahoma during his tenure as attorney general, current EPA policy would allow the agency's deputy administrator to step in on an acting capacity to make any necessary decisions, according to Pruitt's answers.

Slashing EPA Budget Could Hurt Industry, Says Ex-House Staffer

Posted February 01, 2017, 03:29 P.M. ET

By Tiffany Stecker

Agriculture's congressional allies will need to think twice about cutting EPA's budget to ensure money continues to programs such as pesticide regulation, a former top congressional staffer said Feb. 1.

John Goldberg, former science adviser for the House Agriculture Committee who recently formed his own consulting shop, said at a panel that Republicans in Congress may need to scale back on the mantra to defund the EPA under President Donald Trump to make sure that money flows to those programs.

"Simply cutting the EPA budget is not the answer to better government," he said at a panel at the National Association of State Departments of Agriculture winter policy conference.

Goldberg singled out the agency's pesticide office, which registers pest killers for use and oversees the language on labels to ensure that pesticides are used safely. These programs operate differently than regulatory programs, where EPA directives to implement the Clean Air Act, the Clean Water Act and other statutes have triggered conflict with state agencies.

"[Industry has] to communicate the new message to the Hill," added Goldberg, who left the Agriculture Committee after 22 years last year to form Science Based Strategies. "There is an opportunity for better regulations rather than releasing the regulatory bulldogs."

Myron Ebell, the former head of the Trump transition team for the EPA, said in an interview last week he favors cutting \$1 billion from the agency's roughly \$8 billion budget and whittling down the workforce from 15,000 employees to about 5,000 employees. Don Benton, a senior White House adviser currently overseeing the agency's transition, said in an e-mail to employees this week that "no final decisions have been made with regard to the EPA."

The White House has not yet announced a date for the fiscal year 2018 budget proposal, which will indicate the administration's spending priorities for next year.

The new administration will offer a chance for the federal government and states to work jointly on managing environmental issues, said Alexandra Dapolito Dunn, executive director of the Environmental Council of the States. This includes implementation of the revised Toxic Substances Control Act, which, for the first time, authorizes the EPA to share companies' confidential business information with states, tribes, emergency responders and public health officials provided they agreed to safeguard it. "That's what we've been trying to work on with EPA for a long, long time," said Dunn, who also spoke on the panel representing the coalition of state environmental agencies. "Give us room, give us space to make decisions."

More Scrutiny Needed for Alaska Mining Project, Lawmaker Says

Posted February 01, 2017, 02:24 P.M. ET

By Steve Quinn

An Alaska state lawmaker wants the Legislature to have final approval over whether a sulfide mine should be permitted in Southwest Alaska, home to the Bristol Bay Fisheries Reserve and one of the world's largest sockeye runs.

On Jan. 31, House Rep. Andy Josephson's (D) HB 14 received its first hearing in the House Special Committee on Fisheries. Nothing further has been scheduled.

What ensued were the predictable, long-standing battle lines drawn over whether the Pebble prospect, a massive open pit gold, copper and molybdenum mine, should get built.

Opponents say the project, which has not been permitted yet, presents a danger to the world-class fisheries. They cited a Canadian mine's tailings dam breach more than two years ago as potential risks and say more protections such as HB 14 are needed.

Pebble Partnership Ltd., owned by Northern Dynasty Minerals Ltd., and its supporters contend mining and fishing can co-exist, adding that the project deserves a chance to advance to the permitting stage. The new Trump administration is widely expected to give mine's prospects a boost on the federal side.

Building on Ballot Initiative

Although the bill does not specifically mention Pebble, the project fits HB 14's general description of a "large-scale metallic sulfide mine."

Josephson's bill builds on a 2014 ballot initiative backed by two-thirds of the voters, which affords the Legislature the final word on Pebble Mine or other large-scale projects pursued in the fisheries reserve.

But his bill calls for the Legislature to have more than just the final word at the end. Josephson wants three state commissioners to find "beyond a reasonable doubt" the mine presents no danger to the fisheries.

"We can be the bulwark," Josephson told the committee. "It's going to rest on our shoulders, not the federal government's, to protect this great fishery. This is the most important environmental fisheries decision in Alaska's history."

Question of Constitutionality

Deantha Crockett, executive director for the Alaska Miners Association, spoke out against the bill.

Crockett said the industry believes the initiative and, with that, the bill is unconstitutional.

"It violates separation of powers doctrine, which specifies the Legislature enacts laws and the executive branch implements and execute laws," Crockett told the committee. "This process is

called a legislative veto and the Alaska Supreme Court has repeatedly said that a legislative veto is unconstitutional.”

In September 2014, the Pebble Partnership sued the Environmental Protection Agency to keep the EPA from invoking a rare provision that would significantly limit the project in Bristol Bay. In November 2014, a U.S. district judge told the EPA to halt work on a prospective project veto until it could fully review the case.

Trump’s Mexico Feud May Send Natural Gas to \$2 If Exports End

Posted February 01, 2017, 9:11 A.M. ET

By [Naureen S. Malik](#)

Natural gas prices in the U.S. may tumble about 40 percent if President Donald Trump’s feud with Mexico turns into an all-out trade war.

Prices could slide to \$2 per million British thermal units or lower if U.S. gas exports to Mexico by pipeline are halted, according to Tudor Pickering Holt & Co. and Again Capital LLC. While analysts with those companies don’t anticipate a complete cutoff, they’re watching closely for signs of disruption to the shipments, which accounted for as much as 5 percent of U.S. production of the fuel last year.

Trump’s push to impose a 20 percent tax on imports from Mexico to pay for a border wall is threatening to reverse a shift toward stronger alliances between the U.S. and its southern neighbor. The nations’ economies have become increasingly intertwined as crude oil and gas from U.S. shale basins flow south to feed power plants and factories in newly-deregulated Mexican energy markets.

“You could easily talk about dropping to the \$2 area for sure or below that,” John Kilduff, partner at Again Capital LLC in New York, said in a telephone interview Monday. He sees a 40 percent chance of a trade war occurring.

The U.S. is sending a record amount of gas south of the border, with exports via pipeline topping 4 billion cubic feet a day in August through October, based on the most recent data from the U.S. Energy Information Administration. Mexico also became the largest importer of liquefied natural gas from its northern neighbor, receiving eleven cargoes from Cheniere Energy Inc.’s Sabine Pass terminal in Louisiana since early August, according to ship tracking data compiled by Bloomberg.

The energy links between the countries are poised to deepen, with pipeline flows set to rise by almost a billion cubic feet a day this year, Alex Tertzakian, an analyst with Energy Aspects Ltd. in London, said by e-mail Jan. 30. Pipeline projects including Energy Transfer Partners LP’s San Elizario Crossing are seen boosting export capacity by 4 billion cubic feet a day in the first half of the year.

Even without a trade war, the Trump administration’s promised overhaul of trade and economic ties could hurt the U.S. gas industry by slowing Mexico’s gross domestic product growth, James Brick, principal analyst of North American gas with Wood Mackenzie Ltd. in Houston, said in a phone interview Tuesday.

U.S. gas prices would slide by about a dollar if all pipeline exports to Mexico are stopped, leaving the U.S. market awash in supply and forcing drillers to cut production, said Brandon Blossman, managing director at Tudor Pickering in Houston.

"It's certainly a question mark, but I don't think investors believe it will happen," Blossman said. "Exports going away would be a big surprise to the market. It would be a struggle to understand who would win if that trade didn't continue."

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VW Reaches \$1.2 Billion Settlement Over Audi, Porsche Diesels

Posted February 01, 2017, 8:57 A.M. ET

By [Kartikay Mehrotra](#)

Volkswagen AG agreed to pay \$1.2 billion to resolve U.S. consumer claims over tainted large diesel engines, adding to the carmaker's financial burden as it works through a pile of legal challenges resulting from its emissions cheating.

The proposed settlement, with the Federal Trade Commission and drivers of about 78,000 diesel models with 3.0-liter engines, is Volkswagen's latest step in overcoming the biggest scandal in its history and brings the total cost of penalties, buybacks and fixes in North America so far to more than \$23 billion. The deal covers VW Touaregs, several Audi models and Porsche Cayennes, according to filings in San Francisco federal court.

"We will continue to work to earn back the trust of all our stakeholders," Hinrich Woebcken, Volkswagen Group of America's chief executive officer, said in a statement. The agreement means that all customers with affected vehicles in the U.S. now have "a resolution available to them."

Volkswagen, the world's biggest carmaker, admitted in 2015 that about 11 million of its diesel cars were outfitted with software used to deceive emissions testers, sparking probes, lawsuits and recalls around the world. Costs resulting from the scandal so far have blown past the 18.2 billion euros (\$19.6 billion) that the company has set aside to deal with the issue.

The total tally includes a \$14.7 billion agreement reached last year to buy back cars with 2.0-liter diesel engines that carry the so-called defeat devices, and a \$4.3 billion settlement of criminal and civil penalties in the U.S. agreed in January that requires the company to plead guilty to three felony counts. Volkswagen is also involved in investor lawsuits in the U.S. and in Germany related to how the emissions-test rigging affected the stock price, as well as consumer lawsuits and a criminal probe in Germany.

The latest settlement, filed just before midnight Jan. 31 in San Francisco, requires Volkswagen to repair or buy back vehicles, in addition to offering cash compensations. It includes the buyback of as many 20,000 cars with 3-liter engines, which comes on top of more than 500,000 diesel vehicles the company had previously agreed to repurchase or fix.

The deal finalizes terms that had already been agreed on in December, when the cost was estimated at about \$1 billion. VW's burden will increase to as much as \$4.04 billion if the repairs don't take place on time, according to the filing.

In a separate settlement, technology provider Robert Bosch GmbH agreed to pay \$327.5 million over allegations that it played a role in developing VW's diesel cheating technology as early as the late 1990s.

U.S. District Judge Charles Breyer is scheduled to consider the proposed 3-liter settlement on Feb. 14. If he grants preliminary approval, car owners and others would be given a chance to comment on the agreement before it becomes final.

The case is In Re: Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation, 15-02672, U.S. District Court, Northern District of California (San Francisco).

—With assistance from Christoph Rauwald and Karin Matussek.

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EU Specifies Worker Exposure Limits For 31 Substances

Posted February 01, 2017, 01:01 P.M. ET

By [Stephen Gardner](#)

European Union countries must specify new occupational exposure limits for 25 hazardous substances and review their limits for six substances for which workplace exposure thresholds have already been specified as part of a European Commission published a [directive](#) Feb. 1

The directive, published in the EU Official Journal, amends a 1998 EU law on the protection of workers from the effects of chemicals (Directive 98/24/EC). The directive marks the fourth time the 1998 law has been amended and brings the number of substances covered to about 140.

The exposure limit values for the 31 substances covered by the new directive are considered “indicative” and EU countries have some leeway to adopt higher or lower limits in line with their national laws. The directive requires EU countries to adopt their national limits for the substances by Aug. 21, 2018.

The commission, the EU’s executive arm, said in a statement that the newly specified limits were based on independent scientific assessment and provide “employers, workers and enforcers with a common reference point on the maximum level of exposure to these chemicals allowed in the workplace.”

The six substances already subject to EU indicative occupational exposure limit values are 1,4-dichlorobenzene, acetic acid, bisphenol A, calcium dihydroxide, lithium hydride and nitrogen monoxide. For these substances, the amending directive tightens the current indicative exposure limits.

According to the amending directive, EU countries can defer until 2023 adoption of new limit values for nitrogen monoxide and the newly-listed substances nitrogen dioxide and carbon monoxide in “underground mining and tunneling” because of lack of effective measuring technologies.

Ship Industry ‘Nowhere Close’ to Sustainable Recycling, Group Says

Posted February 01, 2017, 01:03 P.M. ET

By [Stephen Gardner](#)

Shipowners worldwide sent 862 large ocean-going vessels for scrapping in 2016, with 668 ending up in Bangladeshi, Indian or Pakistani yards, despite international efforts to restrict unsafe ship breaking, according to figures the NGO Shipbreaking Platform published Feb. 1.

German and Greek shipowners were among the “worst global dumpers” of old ships, the coalition said. Of 100 German-owned ships sold for scrap in 2016, 98 were beached in south Asia, as were 104 of 113 obsolete Greek-owned vessels, according to the data.

Patrizia Heidegger, executive director of the NGO Shipbreaking Platform, said the figures showed that the “shipping industry is nowhere close to ensuring sustainable ship recycling practices.”

The South Asian beaching yards where most European Union end-of-life ships end up “are not only well-known for their failure to respect international environmental protection standards, but also for their disrespect of fundamental labor rights and international waste trade law,” Heidegger said.

The coalition highlighted an accident at Gadani breaking yard, near Karachi, Pakistan, in which a series of explosions Nov. 1, 2016, killed more than 20 workers who were dismantling an oil tanker. Another fire Jan. 10, 2017, at Gadani killed five more workers.

Ship Recycling Regulation

Under the 2013 EU Ship Recycling Regulation ((EU) No. 1257/2013), obsolete vessels bearing the flags of member countries should be broken up only in approved yards that meet minimum environmental and worker safety standards. The European Commission, the EU’s executive arm, published a first list of approved yards last December.

That list only covered yards in the EU. The commission will publish a follow-up list of non-EU yards during 2017.

NGO Shipbreaking Platform spokesman Nicola Mulinaris told Bloomberg BNA Feb. 1 that the EU list of approved recycling facilities “will function as an important market differentiator for yards that have already invested in proper occupational health, safety and environmental standards.”

EU shipowners, however, could still find it “very easy to circumvent the ship recycling regulation by simply using non-EU flags or by flagging out to a non-EU ship registry,” Mulinaris said.

Trump Memo Spurs New Industry Push for EPA Permitting Changes

Posted February 01, 2017, 8:00 A.M. ET

By Patrick Ambrosio

Manufacturers hope President Donald Trump’s call to expedite permitting for new projects will galvanize the EPA and state environmental regulators to speed up their permit review processes and pursue broader revisions to underlying regulations.

Trump’s Jan. 24 [presidential memorandum](#) doesn’t contain specific policy changes, but rather instructs the Commerce Department to coordinate with the EPA and other agencies to develop a “Permit Streamlining Action Plan” that recommends policy and procedural changes that will boost domestic manufacturing. Despite the lack of details, a pair of industry trade organizations that have long sought changes to the EPA’s regulation of the manufacturing sector are optimistic that the new

administration can help ease the process of obtaining air and water permits.

The Trump memo could cover a number of environmental permits that manufacturing facilities must obtain, according to Michael Walls, vice president of regulatory and technical affairs at the American Chemistry Council. Those include Title V operating permits and New Source Review permits issued under the Clean Air Act, as well as National Pollutant Discharge Elimination System permits issued under the Clean Water Act.

The manufacturing sector has highlighted regulatory requirements, including delays in the processing of necessary permits, as a barrier to investment in domestic manufacturing projects. Greg Bertelsen, senior director for energy and resources at the National Association of Manufacturers, told Bloomberg BNA that the Trump memo is “right in line” with that organization’s message on environmental regulations for the past several years.

Trump Priority

Jon Sohn, an environmental and natural resources attorney at Dentons in Washington, D.C., said there are a range of issues that can make the permitting process take longer than industry would like. The Trump administration, however, will have to make the process more efficient and credible in a way that doesn’t circumvent the public’s right to engage on projects in their community, Sohn told Bloomberg BNA.

“Figuring out how to get that done is clearly a priority of President Trump,” Sohn said. “They’re going to have to find a way to do that that respects and values the environment.”

The memo, which calls on federal agencies to submit to the White House within 120 days a plan with recommendations to streamline permitting and ease regulation on the manufacturing sector, is consistent with Trump campaign promises to reduce regulations as part of an economic agenda to drive job growth. The president followed up the memo on streamlining permitting and reducing regulatory burdens on manufacturing with a Jan. 30 [executive order](#) requiring agencies to identify two existing regulations for elimination for every new regulation issued.

In addition to the order instructing the removal of regulatory burdens on manufacturing, a Trump [executive order](#) to speed up environmental reviews for pipelines, highways and other infrastructure projects could benefit manufacturers, Walls said.

“I think it’s appropriate to look at those two memos together,” Walls said. “New investment in our industry is dependent on new infrastructure.”

But Sohn added that any list of credible recommendations on permitting will have to include a “frank discussion” on the capacity of the agencies to do the work faster in light of diminishing budgets in recent years, both on the state and federal levels.

“In my view, the wrong direction would be to set up very draconian timelines without corresponding budget and capacity support to the EPA and their state partners,” Sohn said.

Permitting Run by States

The Trump administration won’t be able to simply order the EPA to issue permits faster because most environmental permitting programs are run by state regulators, with the federal government playing an oversight role. While there are some actions the federal government could take in the short term to expedite permitting, such as revising the process for reviewing state permit decisions,

changing the underlying environmental regulations governing the manufacturing sector would take time.

"I think [Trump] appears to have good intentions, but EPA doesn't directly issue most of the permits," said Brian Potts, a partner at Perkins Coie LLP in Madison. "I always tell clients that the wheel of justice moves slowly. ... The wheels of administrative agencies move even more slowly."

Potts, whose practice focuses on environment and energy issues, said the process to amend any EPA rules to ease permitting requirements, which states then would have to incorporate into their own rules, could take years. In addition, potential administrative changes to other regulations affecting the manufacturing sector, such as Clean Air Act regulations on the utility sector, won't be made quickly because they would be subject to rulemaking requirements under the Administrative Procedure Act, Potts said.

Opposition Likely

Potential changes to the underlying regulations, as well as any push to change the Clean Air Act and other environmental laws, will likely face fierce opposition from environmental watchdog groups, which have said they'll oppose any effort by Trump or Oklahoma Attorney General Scott Pruitt, the nominee to head the EPA, to weaken environmental protections.

Eric Schaeffer, director of the Environmental Integrity Project, told Bloomberg BNA that state regulators already process most environmental permits quickly. Schaeffer served as director of the EPA's Office of Civil Enforcement before leaving the agency in 2002 to co-found the Environmental Integrity Project.

"Most permits go through pretty quickly if the states want them to go through quickly," Schaeffer said. "Where they get held up sometimes is if there is a lot of local opposition" to a project.

The Trump memo indicates that to the extent the EPA reviews a permit, the goal of the agency should be to expedite its processing, he added.

"They're sending a message to grease the permits through," Schaeffer said. "Our take on that is: You want a fast permit? Do what the law says you're supposed to do."

Schaeffer said environmental advocates will continue to exercise their right to challenge permit decisions in the courts, but acknowledged that it is "impossible to keep up" with all the permits that are issued.

Quicker Decisions a 'Simple Reform'

While states take the lead on most environmental permitting issues, there are several steps the federal government can take to speed up the process, attorneys said. In the short term, federal agencies could prioritize permitting programs and reallocate resources to those activities.

Besides air and water permits processed on the state level, there are some permits that the federal government processes. The EPA is the lead permitting agency in some areas, mostly on tribal lands, while the U.S. Army Corps of Engineers reviews wetlands permits issued under Section 404 of the Clean Water Act.

The EPA often defers making controversial decisions on permits and instead puts things on hold,

according to Jeffrey Holmstead, who served as assistant EPA administrator for air and radiation under President George W. Bush. Holmstead, now a partner at Bracewell LLP in Washington, D.C., who focuses on energy and environmental issues, told Bloomberg BNA that sometimes his main job in helping a client through the permitting process is to “hound the agency” to get a decision made.

Making more timely decisions is a “simple reform” that could be implemented fairly quickly because it doesn’t require any regulatory changes, Holmstead said.

Modeling Requirements Could Be Eased

One area that Holmstead identified for improvement is the EPA’s oversight of air quality modeling requirements under the New Source Review permitting program. That program requires manufacturing facilities, power plants and other stationary sources of air pollution to obtain a permit before construction begins.

To obtain a New Source Review permit, an applicant must demonstrate that emissions from the project won’t contribute to a violation of federal air pollution standards for ozone and other pollutants. Holmstead said the modeling is “very case-specific” and can be slowed by the EPA’s need to approve the modeling evaluations.

“In many cases, this is what holds up the project more than anything else,” he said.

In a January Environmental Law Institute [article](#) he co-authored, Holmstead argued that the EPA’s current modeling guidance “substantially overstates” the air quality effects of potential new pollution sources and recommended adopting a probabilistic modeling approach that reflects variability in emissions, weather and background.

Several attorneys noted that the EPA under President George W. Bush sought to change the New Source Review program to ease requirements on power plants, refineries and other industrial facilities by exempting routine maintenance projects from the permitting review. But the U.S. Court of Appeals for the District of Columbia struck that rule down in 2006 (*New York v. EPA*, 443 F.3d 880, 61 ERC 2133 (D.C. Cir., 2006)).

Changes to Objection, Review Processes

Another area the Trump administration could target in an effort to expedite environmental permitting is the objection process under the Title V operating permit program. Title V of the Clean Air Act allows the public to petition the EPA administrator seeking an objection to Clean Air Act operating permits issued by state permitting authorities.

Environmental advocates, including the Environmental Integrity Project, filed 34 permit objection petitions in 2016, according to the EPA’s Title V petition [database](#). The agency is supposed to issue a decision on Title V permit objection petitions within 60 days, but frequently takes longer.

“That might be something you could see the Trump administration try to speed up,” Sohn of Dentons said.

Attorneys also identified the Environmental Appeals Board’s processes for reviewing certain types of permitting decisions as a candidate for changes under the Trump administration. Permit applicants and other interested parties can petition the board, a panel of independent judges, to appeal permit decisions from EPA regional officials and some state permitting authorities. There is “no reason” the Environmental Appeals Board has to be involved in the permitting process and

suggested that EPA leadership could easily alter the process, Holmstead said.

Guidance, Rulemaking Options

In addition to internal EPA process changes, the Trump administration could issue new guidance and regulations to allow for the faster processing of environmental permits at the state level.

For example, the EPA could clarify requirements under the National Pollutant Discharge Elimination System water pollution permitting program, according to Fredric Andes, a partner at Barnes and Thornburg LLP with offices in Washington, D.C., and Chicago. One area that produces some uncertainty and confusion in the Clean Water Act permitting process is antidegradation, the protection of water bodies that meet water quality standards to avoid backsliding, Andes told Bloomberg BNA.

Additional guidance, as well as possible regulatory changes, might be needed to address water permitting for new manufacturing plants built near bodies of water deemed impaired, Andes said. That's due to a 2007 court decision that rejected a water pollution permit for an Arizona copper mining project because the permit would have allowed copper discharges into a river that didn't meet water quality standards (*Friends of Pinto Creek v. EPA*, 504 F.3d 1007, 65 ERC 1289, 2007 BL 118648 (9th Cir. 2007)).

Andes said the EPA hasn't clarified how that ruling affects the ability of new plants to obtain a permit for discharges into an impaired body of water, even if the discharge from that facility is small. The issue hasn't been a priority for the agency because there haven't been many new plants built in the U.S. since the 2007 decision.

"EPA may need to think about not only guidance, but changing the rules that were interpreted in that case," Andes said. "It just hasn't been a priority issue because ... there simply hasn't been a pressing need."

Industry Prepping Recommendations

The agencies tasked with developing the permitting plan can expect to hear a variety of suggestions from industry during the outreach period. Walls of the American Chemistry Council said the agencies' outreach effort will allow for industry to identify specific barriers and concerns to expansion projects.

When asked for the types of regulatory changes that the Trump administration could take to boost manufacturing, Walls identified implementation of more stringent federal ozone standards set in 2015 as an area of focus. The ACC and other industry groups have opposed the standards, which parts of at least 22 states are unlikely to meet. A failure to attain the ozone standards would mean additional pollution control and permitting requirements in areas ranging from big metropolitan areas like Los Angeles to the rural, but oil-and-gas-rich Uinta Basin in Utah.

As part of this permitting and regulatory burden memo, the EPA could ease the implementation schedule for the ozone standards, which calls for decisions on what areas do and don't meet the standards by Oct. 1, Walls said.

Bertelsen of the National Association of Manufacturers also identified the ozone standards as an area where the Trump administration could focus. Besides issuing more timely guidance to states on how to implement permitting under the ozone standards, the EPA also could revoke the less-stringent 2008 ozone standards to ease requirements on states and manufacturers.

Industry advocates are eyeing Congress as a potential avenue to ease compliance with the 2015 ozone standards. Congressional Republicans have shown an appetite for rolling back Obama-era environmental rules early in the 115th Congress: The House is scheduled to vote this week on a pair of resolutions to disapprove of Obama-era rules on methane emissions and coal mining waste. The Congressional Review Act allows Congress to consider resolutions of disapproval on recently issued regulations under expedited floor procedures in the Senate.

While environmental advocates have pledged to fight back against efforts to weaken the Clean Air Act, Holmstead of Bracewell said he's optimistic that there may be an opportunity for Congress to act on environmental issues. Holmstead noted that there are a number of Senate Democrats up for re-election in 2018 in states that Trump won in the 2016 election.

"I think there's an opportunity for sensible statutory reform with these sorts of things," Holmstead said.

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